

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

31576

FILE: B-218556

DATE: June 26, 1985

MATTER OF: Container Products Corporation

DIGEST:

1. Failure specifically to request a ruling by the Comptroller General or to state the remedy desired, as required by GAO's Bid Protest Regulations, is a minor procedural defect which does not require dismissal of the protest when the protest otherwise clearly indicates the desire for a ruling and the requested remedy.
2. Protest will not be dismissed for failure to furnish the contracting officer a copy of the protest 1 day after filing as required by GAO's Bid Protest Regulations, where the 1-day delay in doing so did not delay protest proceedings.
3. Protest that contractor will not supply acceptable items notwithstanding the contractual obligation to do so involves a matter of contract administration, which is the procuring agency's responsibility, not GAO's.

Container Products Corporation (CPC) protests the Pearl Harbor Naval Shipyard's issuance of purchase order No. N00311-85-M-7054 to Cromwell's Welding Company (Cromwell's) for waste containers used in transporting contaminated waste to disposal sites.

We dismiss the protest.

The Navy's request for quotations required that the containers be constructed to specified Department of Transportation (DOT) requirements published in title 49 of the Code of Federal Regulations and that certification of compliance and a supporting safety analysis be provided.

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Quotations were received from Cromwell and CPC, with Cromwell's offer being low. CPC contends, however, that Cromwell's containers will not meet the required DOT standards.

Initially, the Navy contends that the protest should be dismissed since the protester failed to request a ruling from the Comptroller General; failed to specify the form of relief requested; and failed to furnish a copy of the protest to the contracting officer within 1 day after filing the protest in our Office, as required by our Bid Protest Regulations, 4 C.F.R. part 21 (1985).

Section 21.1 of our Regulations provides, in subsection (c), that the protest "shall . . . (5) Specifically request a ruling by the Comptroller General . . . and (6) State the form of relief requested." While these requirements are stated in mandatory terms, subsection (f) states that a protest "may" be dismissed for failure to comply with any of the requirements of the section. Although CPC did not expressly request a ruling by the Comptroller General or specify desired remedies, there was no ambiguity about the protest issue or that CPC was requesting a decision by our Office and award of a contract. Therefore, the cited filing failures constitute minor defects which do not require dismissal of the protest.

As to the Navy's remaining objection, section 21.1(d) of our Regulations requires that the protester furnish to the contracting officer, or, if appropriate, another person or location designated by the agency, a copy of the protest no later than 1 day after the protest is filed in our Office. CPC filed the protest in our Office on April 15, 1985, but the contracting officer did not receive a copy until April 17. (The protester is located in Wilmington, North Carolina, and the procuring activity is located in Pearl Harbor, Hawaii.)

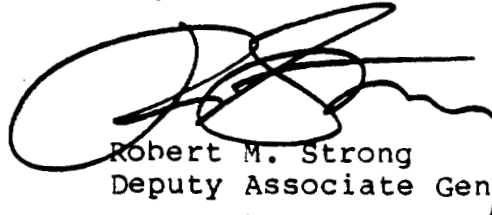
The basis for section 21.1(d) is found in 31 U.S.C. § 3551, et seq., as added by section 2741(a) of the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, which requires both that our Office notify the contracting agency of the existence of a protest within 1 day of the filing date and that the agency furnish a report on the protest within 25 working days after this notice. We strictly enforce section 21.1(d) to avoid a delay that would hamper the contracting agency's ability to meet the 25-day statutory deadline and otherwise delay

protest proceedings. Agha Construction--Reconsideration,
B-218741.3, June 10, 1985, 85-1 C.P.D. ¶ ____.

Nevertheless, as pointed out above, we retain the discretion, in section 21.1(f) of our Regulations, to grant exceptions to the requirement. Under the provisions of CICA, the agency report was due in our Office by May 20 and was received on May 17. The 1-day delay in the agency's receipt of a copy of the protest did not result in a delay of the protest proceedings. Therefore, CPC's failure to furnish a copy of the protest to the procuring activity 1 day after filing in our Office does not require dismissal of the protest.

We dismiss the protest on the merits, however. The Navy states that Cromwell has delivered the containers, including the required certification and safety analysis. Also, the Navy has determined that the containers and analysis conform to the requirements of the purchase order, and CPC has furnished no evidence to refute the Shipyard's finding. In any case, whether the items a contractor delivers actually comply with the performance obligation resulting from an award is a matter of contract administration, which is the responsibility of the procuring activity, not our Office. Lion Brothers Company, Inc., B-212960, Dec. 20, 1983, 84-1 C.P.D. ¶ 7.

The protest is dismissed.



Robert M. Strong
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